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9
10 IN THE UNITED STATES BANKRUPTCY COURT
11 FOR THE DISTRICT OF ARIZONA

12 In re:

13 JORGE A ROSADO,

14 DIANETTE ROSADO,

15 Debtors.

16 CHAPTER 13 PROCEEDINGS

17 Case No. 4:17-bk-14010-BMW

18 **TRUSTEE'S PLAN**
19 **OBJECTION/EVALUATION WITH**
20 **NOTICE OF POTENTIAL DISMISSAL**
21 **IF CONDITIONS ARE NOT**
22 **SATISFIED**

23 **RE: 2nd MODIFIED PLAN (DKT #64)**

24 DIANNE CRANDELL KERNS, Trustee, has analyzed the above-referenced plan and
25 supporting documents on March 11, 2019 and submits the following evaluation and
26 recommendations:

27 **General Requirements:**

- 28 a. Due to the possibility of errors on the claims docket, it is the Attorney's responsibility to
29 review all proofs of claim filed with the Court and resolve any discrepancies between the
30 claims and the Plan prior to submitting any proposed Stipulated Order Confirming Plan to
31 Trustee. Trustee will not recommend confirmation, nor stipulate to confirmation, until the
32 proof of claims issues are resolved to Trustee's satisfaction.

- 1 b. Requests by Trustee for documents and information are not superseded by the filing of an
2 amended or modified plan. LRB Rule 2084-10(b).
- 3 c. Trustee objects to any reduction in the Plan duration or payout in a proposed Stipulated
4 Order Confirming Plan unless an amended or modified plan is filed (using Local Form
2084-4, Chapter 13 Plan) and noticed out.
- 5 d. Trustee requires that any proposed Order Confirming Plan state: "The Plan and this Order
6 shall not constitute an informal proof of claim for any creditor."
- 7 e. Trustee requires that any Stipulated Order Confirming Plan state: "Debtor is instructed to
8 remit all payments on or before the stated due date each month. Debtor is advised that when
9 payments are remitted late, additional interest may accrue on secured debts, which may
10 result in a funding shortfall at the end of the Plan term. Any funding shortfall must be cured
11 before a discharge can be entered. This requirement is effective regardless of plan payment
12 suspensions, waivers or moratoriums, and must be included in any Stipulated Order
13 Confirming."
- 14 f. At the time of confirmation, Debtor is required to certify, via language in the Stipulated
15 Order confirming, that they are current on all payments that have come due on any Domestic
16 Support Orders since the filing of their case and that they are current on all required tax
17 return filings [pursuant to 11 U.S.C. Sec 1325(a)(8), (9)].
- 18 g. Debtor or Debtor's Attorney is required to provide copies of their federal and state income
19 tax returns for each year for the duration of the Plan to Trustee. Tax returns must be
20 forwarded **within 14 days after the returns have been filed**. All Personally Identifiable
21 Information must be redacted prior to submission. Tax returns may be submitted to
22 mail@dcktrustee.com. This requirement is to be included in the Stipulated Order
Confirming the plan. Failure to submit tax returns may result in the dismissal of the Chapter
13 case.
- 23 h. If Debtors received a tax refund larger than \$1,000.00 for the tax period preceding the filing
24 of this case, the continuation of such deduction would constitute a diversion of income that
25 would otherwise be available to creditors. Accordingly Trustee requires that Debtors (i)
adjust payroll tax deductions to prevent over withholding, (ii) amend Schedule I to reflect
the reduced withholding; (ii) submit to Trustee two consecutive paystubs to verify said
reduction; and (iv) increase the plan payments in the Stipulated Order Confirming.
- 26 i. If Debtors are in default (in any amount) on their first mortgage the plan must propose
mortgage conduit payments. If the plan does not propose a mortgage conduit, Trustee
objects to confirmation. This may be resolved by amending the plan or seeking an order
from the court excusing compliance with the conduit requirement. L.R.B.P. Rule 2084-4(b).

1 **Specific Requirements:**

- 2 1. Tax Refunds. If Debtor receives a tax refund in excess of \$1,000 during the pendency
3 of this case, said refund must be turned over to Trustee. The proposed stipulated order
4 on confirmation needs to specifically provide that such refund is a SUPPLEMENTAL
5 payment under the plan.
- 6 2. The Order Confirming Plan Must Contain the Following Language Related to
7 Treatment of General Unsecured Claims: "General Unsecured Claims. Such claims
8 shall be paid pro rata the balance of payments under the Plan and any unsecured debt
9 balance remaining unpaid at the end of the Plan may be discharged as provided in 11
10 U.S.C. § 1328(a)."
- 11 3. Filed Proofs of Claim. To date Trustee has noted that the following Creditors have filed
12 proofs of claim that differ from the treatment proposed in the Chapter 13 Plan. **Trustee**
13 **objects to the treatment of these proofs of claim. This objection may be resolved**
14 **by amending the secured/priority treatment to match the proofs of claim in the**
15 **Stipulated Order Confirming the Plan or by filing an objection followed by an**
16 **order: NONE.** This objection extends to proofs of claim, if any, filed after the date of
17 this evaluation/objection which seek treatment different from that provided for in the
18 proposed Chapter 13 Plan.
- 19 4. Unfiled Proofs of Claim. To date the following creditors listed in the Plan have not filed
20 proofs of claims: **NONE.** Trustee reserves the right to supplement or amend this
21 paragraph.
- 22 5. Plan Payments. Debtors have made payments in the total amount of \$5,200.00.
23 Debtors are delinquent in the amount of \$520.00, representing 1 month through
24 February 27, 2019. Trustee will not stipulate to confirmation unless the plan payments
25 are current. Plan payment information may be obtained by logging on to www.ndc.org.
26 In general, the information on this website is 24-hours old.
6. Plan Payments for Debtor's Modified Plan. Trustee objects to confirmation because the
plan payment schedule does not reflect the payments that have already been made to
date. Trustee requests that the payment schedule reflect actual amounts paid into the
plan to date and that changes in the payment schedule be confined to future
payments. This objection may be resolved by amending the plan so that the plan
payment schedule reflects the actual payments already made to Trustee as of the date of
the modified plan.

- 1 7. Documents Requested by Trustee. Any documents that have been requested will need
2 to be provided within 30 days. Such documents should be sent to Trustee with a cover
3 letter outlining and describing the documents. **Any documentation submitted must be**
4 **legible, organized by category and month, totaled and averaged (i.e. “show your**
5 **work”). If Debtors fail to follow this guideline, Trustee will not consider any**
6 **information as being received and a Dismissal Order may be lodged for failure to**
7 **comply. Debtor is also required to submit a written explanation justifying the**
8 **reasonable NECESSITY of the excessive expenses.**
- 9 8. Liquidation Analysis: At this time Trustee believes that the plan **does** satisfy the
10 liquidation analysis requirements. Trustee reserves the right to amend this conclusion.
- 11 9. Plan Feasibility. Pursuant to Trustee’s calculations, the Chapter 13 Plan is feasible at
12 this time. Trustee reserves the right to file an amended evaluation requiring adjustments
13 to the terms of the plan, including an increase in plan funding if necessary, in order to
14 address all timely filed proofs of claim once the claims bar date has passed in this case.
- 15 10. Objections to Confirmation. Debtors shall resolve plan objections by submitting a
16 proposed SOC to Trustee or by setting a hearing on the objection within 30 days of this
17 objection/evaluation. If Debtors wish to confirm by stipulation, the stipulation of the
18 objecting creditor must be obtained in writing prior to submitting a proposed SOC to
19 Trustee. If the resolution of the objection requires changes which have an adverse
20 impact on any other creditor under the plan (including a reduction in the amount to any
21 creditor and/or a delay in payment), the changes must be noticed to creditors and an
22 opportunity for objection provided. To date Trustee has noted that the following
23 creditors have filed objections to the Chapter 13 Plan: **NONE**.
- 24 11. Submission of Proposed SOC. If Debtors propose to confirm the plan through a
25 stipulated order on confirmation, a Notice of Submitting Proposed SOC should be filed
26 with the Court, including a complete copy of the Proposed SOC as an exhibit. The
Notice, SOC, and filing receipt may then be transmitted to Trustee via electronic mail
(mail@dcktrustee.com) or first class mail. Trustee will not review a proposed SOC if
it does not appear on the court’s docket.¹ Trustee considers the time for reviewing a
proposed Order pursuant to LRBP Rule 2084-13(e), to begin running when all
Recommendation conditions are met.

¹ The alternative to stipulated confirmation is setting a contested confirmation hearing before the judge.

1 RESPECTFULLY SUBMITTED this 14th day of March 2019.

2 OFFICE OF THE CHAPTER 13 TRUSTEE
3 7320 N. La Cholla #154-413
4 Tucson, AZ 85741

5 By /s/ Craig Morris ASB# 011628
6 Craig Morris
7 Staff Attorney for the Chapter 13 Trustee

8 A copy of the foregoing was filed with the
9 court and a copy, together with a receipt of filing,
10 was transmitted via electronic or first class
11 mail this 3/14/2019 to:

12 JORGE A ROSADO
13 DIANETTE ROSADO
14 8016 E EL TORO DR
15 NO 107
16 TUCSON, AZ 85715
17 Debtors

18 WAYNE MORTENSEN
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24 Attorney for Debtors

25 By: NC
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